

**Disallowed rectification of tax invoice as not covered under Section 161 and Limitation Act not applicable to Special statute**

The Hon'ble Tripura High Court in *M/s Kiran Enterprise v. The State of Tripura and Ors. [WP (C) No. 114 of 2020 dated December 17, 2020]* rejected petition filed along with condonation of delay application for rectification of error (name of the party) in the tax invoice under Section 161 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") for being barred by limitation. Further held that, the rectification as sought is not covered by Section 161 of the CGST Act and when a legal action is barred by limitation unless that bar is overcome, no decision can be rendered on merit.

**Facts:-**

M/s Kiran Enterprise ("**Petitioner**") is a sole proprietorship firm and the distributor of Airtel as engaged by Bharati Hexacom Limited for Dharmanagar. The tax invoices used to be prepared by Bharati Hexacom Limited in the name of M/s New Kiran Enterprise however, he mistakenly entered the name of M/s Kiran Enterprise.

On September 4, 2018, when a search was carried out under Section 67(2) of CGST Act, it was revealed from GSTTR-3B for the period from July, 2017 to 31st March, 2018 that the Petitioner had been found to have wrongly utilized excess Input Tax Credit ("**ITC**") at INR 20,03,893.80, as per Form GSTR- 2A (inward supply). By the order of seizure dated September 4, 2018 tax invoices were seized by the Superintendent of State Tax, Dharmanagar ("**Respondent**") and a Show cause notice ("**SCN**") dated October 10, 2018 under Section 74(1) of the CSGST Act was issued to the Petitioner to show cause as to why the amount (excess ITC) along with interest payable thereon and penalty equivalent to the tax be levied and why further penal action should not be taken under Clause (e) of Section 122(3) of CSGST Act.

The Petitioner by filing a reply to the notice clarified that owing to inadvertence name of M/s Kiran Enterprise was recorded in the tax invoice instead of M/s New Kiran Enterprise, to Respondent and the order dated November 15, 2018 was passed raising the claim in the form No. GST DRC-07 asking to deposit the tax, penalty and interest.

Further, the Petitioner filed a petition dated November 08, 2019 for rectification of the error in the tax invoice and to recall the SCN dated October 10, 2018 and the order dated November 15, 2018, and to condone the delay occurred in filing such petition laying the reason for delay.

Having considered the plea, the Respondent by his communication dated December 17, 2019 had conveyed the decision that the adjudicating authority has no right to rectify an error after expiry of a period of more than six months.

The Petitioner by way of this Writ petition filed, has challenged fundamentally two orders being the order dated November 15, 2018 and the decision contained in the communication dated December 17, 2019.

**Issue:-**

Whether the Respondent had the authority to condone the delay on the face of the petition filed for rectifying the defects or errors in the notice dated October 10, 2018 and the order dated November 15, 2018?

**Held:-**

The Hon'ble Tripura High Court in ***WP (C) No. 114 of 2020 dated December 17, 2020*** held as under:

- Noted that the Petitioner filed the petition under Section 161 of the CGST Act after expiry of approximately twelve months, for rectification of defects/errors before the Respondent No. 4, on November 8, 2019.
- Observed that Section 161 of the CGST Act provides that for purpose of any error which is apparent on the face of the record in the decision or the order or the notice or the certificate or any other documents issued by any authority, the said authority can exercise the said power to rectify either on own motion of the said authority or by the officers appointed under CGST Act or by the affected person, if such action is taken within a period of three months from the date of such decision, or order or notice or certificate or any other documents as the case may be. The first proviso stipulates that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other documents. The second proviso provides that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of clerical or arithmetical error, arising from any accidental slip or omission.
- Held that, it is apparent on the face of the said provision of Section 161 of the CGST Act that this is a complete code within itself and it has impliedly excluded the Limitation Act, 1963 ("**Limitation Act**"). Thus, it has been observed by the Respondent in the decision communicated by the reply dated December 17, 2019 does not suffer from any infirmity. Moreover, the Limitation Act will not apply automatically unless it is extended to the special statute such as CGST Act inasmuch as law in this regard is absolutely unambiguous that except in the case of the suit, appeal or application in the court, the limitation of Act will not apply/extend for the local or special statute.

- Dismissed the Petitioner's contention in respect of the extension of the Limitation Act, and held that the rectification as sought is not covered by Section 161 of the CGST Act.
- Concluded that when a legal action is barred by limitation unless that bar is overcome, no decision can be rendered on merit. The Court concurred with Respondents, that even if the Limitation Act would have applied, the Court might not have extended its jurisdiction of judicial review.

**Our comments:**

The Petitioner in this case filed the writ petition for rectification of the name of the party on invoice (i.e., from M/s Kiran Enterprise to M/s New Kiran Enterprise) under Section 161 of the CGST Act whereas Section 161 ibid provides for rectification of the error which is apparent on the face of the record in the decision or the order or the notice or the certificate or any other documents issued by any authority and not for the documents/returns of the taxpayers.

**Relevant Provisions:-**

**Section 161 of the CGST Act:**

*“Rectification of errors apparent on the face of record-*

*161. Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:*

*Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:*

*Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:*

*Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.”*

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